

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CASE NO.: 1:18-cv-02608-LLS

TAKE-TWO INTERACTIVE SOFTWARE,
INC.,

Plaintiff,

v.

DAVID ZIPPERER,

Defendant.

**DEFENDANT'S ANSWERS AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S
COMPLAINT**

Defendant DAVID ZIPPERER, by and through its undersigned counsel, and for his response to Plaintiff's Complaint states as follows:

NATURE OF THE ACTION

1. Denied.
2. Denied.
3. Denied.
4. Denied.
5. Denied.

PARTIES

6. Defendant is without knowledge, information and belief as to the statement contained in Paragraph 6 and therefore denies same.

7. Admit.

JURISDICTION AND VENUE

8. Denied.

9. Denied.

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

10. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 10 and therefore denies same.

11. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 11 and therefore denies same.

12. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 12 and therefore denies same.

13. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 13 and therefore denies same.

14. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 14, and further states that the document speaks for itself.

15. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 15 and therefor denies same.

16. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 16 and therefore denies same.

17. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 17 and therefore denies same.

18. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 18 and therefore denies same.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 25 and therefore denies same.

26. Denied.

27. Denied.

28. Denied.

COUNT I

29. Defendant restates and reaffirms his answers to Paragraphs 1 through 28, above, as if more fully set forth herein.

30. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 30 and therefore denies same.

31. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 31 and therefore denies same.

32. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 32 and therefor denies same.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

COUNT II

39. Defendant restates and reaffirms his answers to Paragraphs 1 through 38, above, as if more fully set forth herein.

40. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 40 and therefore denies same.

41. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 41 and therefore denies same.

42. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 42 and therefore denies same.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

COUNT III

51. Defendant restates and reaffirms his answers to Paragraphs 1 through 50, above, as if more fully set forth herein.

52. Denied.

53. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 53 and therefore denies same.

54. Denied.

55. Denied.

COUNT IV

56. Defendant restates and reaffirms his answers to Paragraphs 1 through 55, above, as if more fully set forth herein.

57. Denied.

58. Defendant is without knowledge, information and belief as to the allegations contained in Paragraph 58 and therefore denies same.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

COUNT V

In its decision filed at ECF, the Court dismissed this Count; therefor, no answer is required to Plaintiff's Paragraphs 63-69.

PRAYER FOR RELIEF

To the extent that a response is required to the Prayer for Relief, Defendant denies same.

DEMAND FOR JURY TRIAL

Defendant David Zipperer demands a jury trial.

AFFIRMATIVE DEFENSES

Pursuant to Federal Rule of Civil Procedure 8(c), and without assuming any burden that would not otherwise bear, and reserving its rights to assert additional defenses, Defendants assert the following defenses to Plaintiff's Complaint. Defendants reserve the right to amend this answer with additional defenses as further information is obtained.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted, in whole or in part.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part under the principals of equity, including but not limited to waiver, estoppel, acquiescence, and/or unclean hands.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of copyright misuse.

FOURTH AFFIRMATIVE DEFENSE

If Defendant infringed, Plaintiff granted him an implied license to do so.

FIFTH AFFIRMATIVE DEFENSE

If Defendant infringed, any work Defendant created was a fair use.

SIXTH AFFIRMATIVE DEFENSE

If Defendant infringed, Defendant's infringement was de minimus.

SEVENTH AFFIRMATIVE DEFENSE

If Defendant infringed, Defendant's infringement was of portions of Plaintiff's work that are unprotectible under copyright.

EIGHTH AFFIRMATIVE DEFENSE

Defendant was privileged to take the actions alleged by Plaintiff.

NINTH AFFIRMATIVE DEFENSE

If Defendant interfered with Plaintiff, Defendant's interference was not the proximate cause of Plaintiff's Damages.

Dated: September 5, 2018

Respectfully submitted,

/s/ Joel B. Rothman

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on September 5, 2018, a true and correct copy of the foregoing document was served by electronic mail by the Court's CM/ECF System to all parties listed below on the Service List.

/s/ Joel B. Rothman
JOEL B. ROTHMAN

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